IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL REVISION APPLICATION NO.46 OF 1996

Sasangi Engg. (Bombay) Pvt. Ltd. Appellants

Vs.

Sah Sunil Kumar & anr. Respondents

WITH

CIVIL REVISION APPLICATION NO.47 OF 1996

Car Mart Pvt.Ltd. & ors. Appellants

Vs.

Anil Kumar Sah & ors. Respondents

CORAM: B.H.MARLAPALLE,J.
June 20, 2005.

Mr.J.Reis with Mr.Amol Bavase i/b M/s. Udwadia Udeshi & Berjis for appellants.

Mr.Aniruddha Joshi with Mr.Nirmal Damani and Mr.Lalit Jain i/b M/s.Kanga & Co. for respondents.

ORAL JUDGMENT:

1. In S.C. Suit No.3789 of 1995 and S.C. Suit No.3790 of 1995 sur-rejoinders were filed on 18-8-1995 separately and in para 1(A) of the said affidavits in sur-rejoinder the point of jurisdiction of the trial Court was raised and, therefore, the Court thought it fit to frame the following issue:

"Whether this court has jurisdiction to

entertain and try the suits?"

. By the common judgment and order dated 8th November 1995 the said issue has been answered in the affirmative and the defendants are dissatisfied with the view taken by the learned Additional Principal Judge, City Civil Court at Mumbai.

2. Both the appeals question the legality of the common order and, therefore, the appeals are being decided by this common judgment. The case of the defendants in support of their contentions that the Court below could not entertain both the suits was on the basis of an alternative and efficacious remedy for the plaintiffs under the Companies Act, 1956 and thus implied ouster of the Civil Court's jurisdiction. It was submitted by Mr.Reis, the learned counsel for the appellants that the remedy available under the Companies Act was equally effective, speedy and efficacious remedy for the reliefs claimed by the plaintiffs and, therefore, the trial Court committed an error on the face of record in holding that the Court's jurisdiction was not ousted. In the suits filed separately the plaintiffs had alleged that the meetings of the Board of

Directors purportedly held on 30th March 1995 and 25th April 1995 were illegal and without notice to the other Directors and the resolutions passed in such meetings for induction of additional Directors i.e. Defendant Nos.4 and 5 in S.C.Suit No.3789 of 1995 and Defendant Nos.3 and 4 in S.C. Suit No.3790 of 1995 were illegal, null and void. The plaintiffs took inspection of record on 2nd June 1995 of the 1st Defendant Company with the Registrar of Companies at Mumbai and noted with shock that the Board of Directors of the 1st Defendant had purportedly held meetings on 30th March 1995 and 25th April 1995 and Form No.32 was submitted with Registrar of Companies indicating the appointment of Additional Directors. They claimed that Defendant no.2 had illegally called these meetings and transacted the business which did not have the sanctity in law. As per them the Directors of the 1st Defendant company in S.C. Suit No.3789 of 1995 were (1) Sunil Kumar Sah, (2) Roop Narain Sah and (3) Smt. Meenakshi Sanjeev Sah and defendant no.2 became the Director of the Company on the demise of Shri Rajeev Kumar Sah. The substantial prayer is prayer clause (a) which reads as under:

(a) that this Hon'ble Court be pleased to

declare:

(i) that the alleged meetings of the Board of Directors of the 1st Defendant allegedly held on 30th March, 1995 and 25th April, 1995 are bad in law, illegal, null and void and the resolutions purported to have been passed thereat are illegal, null and void ab initio and of no legal effect and;

(ii) that the purported appointment of the 4th and 5th Defendants as Directors of the 1st Defendant are illegal, null and void and not binding on the 1st Defendants and/or the shareholder.

3. The defendants, by referring to these prayers, claim that what was under challenge was the legality of the business transacted in the Board meetings held on 30th March 1995 and 25thA April 1995 and the plaintiffs had sought the removal of the Directors appointed afresh i.e. 4th and 5th Defendants in the

first suit and 3rd and 4th defendants in the second suit. As per the defendants such remedy could be more efficaciously entertained under the Companies Act and not in a suit for declaration as was sought to be done by the plaintiffs. Section 286 of the Companies Act requires that every Director shall be given notice of the meeting of the Board of Directors in writing and at his usual address. Section 288 prescribes the requirement of quorum and the procedure for resuming the adjourned meetings on account of want of quorum. Section 289 states that no resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the resolution has been circulated in draft together with the necessary papers, if any, to all the Directors. The learned counsel also referred to Chapter II regarding appointment of Directors and their removal and submitted that if the plaintiffs sought the removal of the newly appointed Additional Directors they could have initiated appropriate proceedings for their removal under Section 284 of the Act. He also referred to the provisions of Sections 397, 398, 399, 402 and 403 of the Act in support of his contentions that the Company Law Board could have more

effectively dealt with the allegations set out before the Court below. If it was a case of mismanagement agitated by the plaintiffs, an application under Section 398 could have been filed. Under Section 399 the plaintiffs are eligible Directors to submit an application under the said section. The Company Law Board has the powers of passing interim orders and also final orders as is clear from Sections 403 and 402 of the Act respectively. In support of these contentions reliance has been placed on a decision of this Court in the case of Khetan Industries Pvt.Ltd. v. Manju Ravindraprasad Khetan reported in **AIR 1995 Bombay 43**.

4. The learned counsel for the plaintiffs on the other hand supporting the view taken by the Court below submitted that the issues raised in these civil revision applications are no more res integra in view of the decision rendered by this Court (Division Bench) and relied upon by the trial Court in the case of Santosh Poddar v. Kamalkumar Poddar reported in **1992 (3) Bom.C.R. 310**.

5. By reading the substantial reliefs sought for by the plaintiffs which have been reproduced

hereinabove it is clear that the suits were filed mainly for the declaration of the meetings purportedly held on 30th March and 25th April 1995 as illegal, void ab-initio and not binding on the plaintiffs. The appointment of the additional Directors was consequent to the said meetings and, therefore, the second relief prayed for by the plaintiffs was an ancillary / consequent relief. The Division Bench of this Court in Santosh Poddar's case (Supra) was dealing with a reference placed before it on account of differing views of two different Single Benches. The plaintiffs in Short Cause Suit No.7688 of 1991 had prayed for a declaration that the 1st defendant ceased to be a Director of Poddar Tyres Ltd. Similar relief was sought in Suit No.6975 of 1991. Further a declaration was sought that the meetings of the Board of Directors of 3rd defendant held after 31st December 1990 and more particularly the meetings held on 23rd March 1991 and 10th June 1991 were illegal, invalid and non est. The issue of jurisdiction was raised on similar grounds and it was prayed that the City Civil Court would alone have jurisdiction and not this Court before whom the suits were present. The Division Bench referred to Section 2(11), Section 10(1) to (3), Section 391, Section 397

etc. of the Companies Act and recorded its conclusions in para 21 in the following words:

> "21. From the provisions of the Companies Act we do not find anything by which we can infer that the jurisdiction of the Civil Court is ousted. The very fact that section 2(11) is part of the definition clause under the Companies Act under which a Court is defined to mean the Court as prescribed under Section 10, clearly shows that whenever the term 'the Court' is used in any section of the Companies Act, the term 'Court' will have to be interpreted with reference to section 10. These sections will have no application where any general civil suit is filed. The definition clause is attracted only when resort is had to a proceeding under the Companies Act under a section which prescribes resort to a Court. Under the Companies Act powers are conferred not only on Courts but also on other authorities like the Company Law Board, the Central Government and the Registrar. Where a power is vested by the Act in a Court, that Court has to be ascertained with reference to section 10. Beyond so specifying the Court competent to deal with such a matter, section 10 cannot be construed as investing the Company Court with jurisdiction over every matter which may arise in respect of a Company or as divesting Civil Courts of their jurisdiction."

The above observations are squarely applicable to the instant case and the decision in the case of Khetan Industries Pvt.Ltd. (Supra) would not be attracted. In the case at hand the substantial relief is not the removal of the additional Directors for which the procedure has been prescribed under Section 284 of the Companies Act read with Section 283. The learned

Single Judge of this Court in Khetan Industries case (Supra) held that the Principal Civil court of original jurisdiction for Greater Bombay is the High Court of Judicature at Bombay and not the City Civil Court and the latter cannot be held to be principal civil court. The ratio of Khetan Industries case (Supra) does not apply to the facts of this case. Section 284 includes the right of the shareholders to remove the directors and in the instant case the main challenge, as noted earlier, is to the legality of the meetings of the Board of Directors held on 30th March and 25th April 1995. For the declaration sought for in the present case the remedy under Section 397 as it stands presently, cannot be said to be an equally effective and efficacious remedy. In spite of the strenuous efforts put in by Mr.Reis I am bound by the view taken by the Division Bench on a reference in Santosh Poddar's case and the learned Judge of the trial Court has rightly followed the said law. Under the circumstances, the challenged to the impugned order holding that the Court below has jurisdiction to entertain the suits is devoid of merits and it must fail. Mr.Reis also submitted that the Division Bench was deciding the issue of jurisdiction of the City Civil Court viz-a-viz the

original jurisdiction of this Court and it was not called upon to consider the remedy available under Section 397 of the Companies Act. The observations made by the Division Bench in para 21 as reproduced hereinabove are a clear answer to these averments and, therefore, the trial Court rightly held that its jurisdiction is not ousted on account of the provisions of Section 397 or Section 284 of the said Act.

6. Hence the Civil Revision Applications are hereby dismissed with no order as to costs. The trial of the pending suits is hereby expedited.

7. Mr.Reis, the learned counsel for defendant nos.1 and 2 at this stage submitted an oral application to continue the stay granted by this Court for a period of four weeks. The application is hereby rejected.

(B.H.MARLAPALLE,J.)